

REMARKS

This application is a reissue application and the amendment practice change of July 30, 2003 does not apply to reissue applications. In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. The applicants have amended claim 1 to avoid a possible 35 USC §112 rejection with the definition of R⁵ and R⁶ so that it has the definition of R⁴ and not the R⁴ and R³.

The Examiner stated that the Assent of Assignee filed April 3, 2002 was not proper for failure to state the authority of the person signing the assent of assignee. The applicants respectfully disagree. The assent of assignee was executed by two procurists (ppa) for Basell Polypropylen GmbH (Dr. Stefan Seelert and Dr. Thomas Meyer). Basell Polypropylen GmbH has recently merged to Basell Polyolefine GmbH. The applicants previously submitted an English translation of the name change indicating that Dr. Thomas Meyer and Dr. Stefan Seelert have the authority to sign on behalf of the company (see Appendix 1 of the last amendment).

Clearly Dr. Thomas Meyer and Dr. Stefan Seelert are empowered to sign a submission establishing ownership interest and/or act on behalf of the organization. The German District Court does not enter names of people to a list of generally authorized signatory in the Register of Commerce without a formal empowerment by a corporate resolution. Dr. Thomas Meyer and Dr. Stefan Seelert are formally authorized "Prokuristen" according to §§48-53 of German Commerical Code. (See enclosed copy of translation). In particular,

Section 48 states,

“The signature authorization can only be granted by the owner of the commercial business or his lawful representative and only by means of an express declaration.”

Basell Polyolefine GmbH has explicitly empowered Thomas Meyer and Dr. Stefan Seelert as an authorized signatory (see Appendix 1 of the last amendment).

Section 49 states,

“The signature authorization shall **authorize all types of judicial and extrajudicial transactions and legal acts involved in the running of a commercial business.**”

Section 53 states,

“The owner of the commercial business shall give **notice** of the **grant of the signature authorization for the purposes of registration in the commercial register.**” (emphasis added)

Again, Dr. Thomas Meyer and Dr. Stefan Seelert are empowered to sign a submission establishing ownership interest and/or act on behalf of the organization and their names are listed in the commercial register (see Appendix 1 of the last amendment). For the above reasons, Dr. Thomas Meyer and Dr. Stefan Seelert have the authority to sign on behalf of the assignee and this rejection should be withdrawn.

Claims 1-15 and 19-26 were rejected based upon a defective reissue declaration. The applicants have enclosed a supplemental reissue declaration and power of attorney. The applicants believe that this complies with the Examiner's request. For the above reasons this rejection should be withdrawn.

Upon reviewing the prosecution of this application, the applicants noticed inadvertent errors with respect to page 16 of the amendment mailed June 15, 2000, the applicants stated,

“The Examiner rejected the application as being anticipated by, or rendered obvious over Mitsui, because Mitsui mentions the metallocene ethylene bis(2,3-dimethyl-1-indenyl)zirconium dichloride. The Examiner studied the Derwent Abstract of the document and stated that this compound is one of 7 metallocenes listed there. However, enclosed is an English translation of the whole text of Mitsui. At page 32, there are mentioned 20 metallocenes which contain zirconium, from which only one, ethylene bis(2,3-dimethyl-1-indenyl)zirconium dichloride, is substituted in the 2-position. In addition, Mitsui discloses 2 species of titanium metallocenes and two species of hafnium metallocenes which are not substituted in the 2-position. Therefore, out of the 24 species, there is only one metallocene substituted at the 2-position. With respect the species substituted at the 2-position, the applicants' claimed invention no longer covers this species.

The applicants have three independent claims (claims 1, 7 and 19). In the applicants' claims 1 and 19, R^3 is not methyl. It is noted that R^3 can be C_2 - C_{10} -alkyl or a C_1 - C_{10} alkyl which is halogenated. In claim 7, R^3 and R^4 are not methyl but hydrogen. Furthermore, Mitsui does not use this species in any of its 10 examples and does not give any hint that there are any advantages using it.” (emphasis added)

The first paragraph refers to the Mitsui disclosing methyl substituted at the two and three positions (2,3-dimethyl...). Mitsui discloses the methyl substituted at both the two and three positions and none of the species are only substituted by methyl only at the 2 or 3 position. The statements made above by the undersigned refers to the 2-position and should refer to the 3-position. The argument applies equally to the 3-position. The applicants amended the 3-position and not the 2-position of the ligand. Again, Mitsui discloses metallocenes substituted with methyl at both the 2 and 3 positions of the ligand.

The applicants have three independent claims 1, 7 and 19. Methyl is excluded from the applicants' independent claims 1 and 19 at the 3-position and not the 2-position. In the applicants' claims 1 and 19, R^5 and R^6 can be methyl (the 2-position substituent) but R^3 is not methyl (3-position substituent). In independent claim 7, the 3-position is hydrogen and not

methyl (R^3 and R^4 are hydrogen). The last four sentences of the first paragraph of the quote should have been,

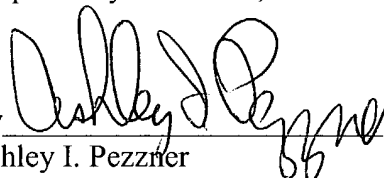
“At page 32, there are mentioned 20 metallocenes which contain zirconium, from which only one, ethylene bis(2,3-dimethyl-1-indenyl)zirconium dichloride, is substituted in the 3-position. In addition, Mitsui discloses 2 species of titanium metallocenes and two species of hafnium metallocenes which are not substituted in the 3-position. Therefore, out of the 24 species, there is only one metallocene substituted at the 3-position. With respect the species substituted at the 3-position, the applicants’ claimed invention no longer covers this species.” (emphasis added)

The second paragraph of the above quote states “In claim 7, R^3 and R^4 are not methyl but hydrogen.” R^3 cannot be methyl but R^4 can be methyl. This still excludes the ethylene bis(2,3-dimethyl-1-indenyl)zirconium dichloride taught in Mitsui. The applicants apologize for these inadvertent statements. Again, the applicants’ claimed invention is not taught by Mitsui since R^3 cannot be methyl.

A one month extension has been paid. No additional fees are due. If there are any additional fees due in connection with the filing of this response, including any fees required for an additional extension of time under 37 CFR 1.136, such an extension is requested and the Commissioner is authorized to charge or credit any overpayment to Deposit Account No. 03-2775 under Order No. 09086-00185-US from which the undersigned is authorized to draw.

A prompt and favorable action is solicited. The applicants believe that these claims are in condition for allowance, however, if the Examiner disagrees, the applicants respectfully request that the Examiner telephone the undersigned at (302) 888-6270.

Respectfully submitted,

By 

Ashley I. Pezzner

Registration No.: 35,646

CONNOLLY BOVE LODGE & HUTZ LLP

1007 North Orange Street

P.O. Box 2207

Wilmington, Delaware 19899

(302) 658-9141

(302) 658-5614 (Fax)

Attorney for Applicant

Enclosure: Reissue declaration

Translation of §§48-53 of German Commerical Code